

# **EXHIBIT “F”**

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## LOAN AGREEMENT

This Loan Agreement, dated as of December 22, 2002, is entered into by and among Colt Gateway LLC, a Connecticut limited liability company ("Borrower"), and those persons listed on Exhibit "A" hereto ("Lender").

### SECTION 1: DEFINITIONS AND ACCOUNTING TERMS.

1.1 **Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth respectively after each:

"Agreement" means this Loan Agreement.

"Assignment of Architect's Contract, Plans and Drawings" means the assignment by Borrower of its agreement with the architect, to be executed by Borrower prior to the disbursement of any construction funds.

"Assignment of Engineer's Contract, Improvement Plans, Specifications and Drawings" means the Assignment of Improvement Plans, Specifications and Drawings to be executed by Borrower prior to the disbursement of any construction funds.

"Assignment of Permits, Licenses, Franchises and Authorizations" means the Assignment of Permits, Licenses, Franchises and Authorizations executed by Borrower.

"Assignment of Rents" means the Assignment of Rents contained in the Mortgage.

"Business Day" means any Monday, Tuesday, Wednesday, Thursday, or Friday on which banks in the State of Nevada are open for business.

"Control Account" means Disbursement Agent's account in which the Control Account Funds shall be held.

"Control Account Escrow Agreement" means the Control Account Escrow Agreement and Security Agreement by and between Borrower, Lender and Disbursement Agent of even date herewith.

"Control Account Funds" means the portion of the Loan funds held in the Control Account at any time, together with interest accrued thereon, any additions thereto made pursuant to this Agreement, and any and all investments and reinvestments of any such sums now or hereafter made.

**"Default Rate"** shall have the meaning set forth in the Note.

**"Disbursement"** means each of the disbursements by Lender or Disbursement Agent of the Proceeds of the Loan or other funds (including the Control Account Funds) pursuant to this Agreement.

**"Disbursement Agent"** means Project Disbursement Group, Inc., or any other licensed construction control company approved by Lender which may at any time hold any portion of the Control Account Funds pursuant to this Agreement.

**"Disbursement Schedule"** means the schedule for Disbursements attached hereto as Exhibit "B."

**"Effective Date"** means the date the Mortgage is recorded in the Official Records of Hartford County, Connecticut.

**"Environmental Indemnity"** means the Environmental and Accessibility Indemnity Agreement executed by Borrower and the Guarantor.

**"Financing Statement"** means financing statement of even date herewith executed by Borrower in favor of Lender with respect to the Personal Property.

**"Governmental Agency"** means any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, court, administrative tribunal or public utility.

**"Guarantor"** means, collectively, Homes for America Holdings, Inc., a Nevada corporation, and Tanamera Resort Partners, LLC, a Nevada limited liability company.

**"Guaranty"** means the Unconditional Guaranty executed by the Guarantor in favor of Lender, either as originally executed or as it may from time to time be supplemented, modified or amended.

**"Improvements"** means any and all improvements now existing or hereafter constructed on the Real Property.

**"Interest Reserve"** means that portion of the Control Account Funds allocated to interest reserve pursuant to Section 3.3 below.

**"Laws"** means, collectively, all federal, state and local laws, rules, regulations, ordinances and codes.

**"Lender"** means collectively, those persons and entities listed on Exhibit "A"

attached hereto and any other persons or entities who may be added to that list pursuant to an amendment to the Note.

**“Loan”** means the loan to be made by Lender to Borrower pursuant to Section 3 hereof.

**“Loan Documents”** means, collectively, this Agreement, the Note, the Security Documents, the Environmental Indemnity, the Guaranty and the Project Assignments, in each case either as originally executed or as the same may from time to time be supplemented, modified or amended, together with any other documents or instruments which may at any time be executed by Borrower in connection with the Loan.

**“Maturity Date”** means the date which is twelve (12) months after the date of the Note.

**“Mortgage”** means the Mortgage, Assignment of Rents, Security Agreement and Fixture Filing of even date herewith, executed by Borrower in favor of Lender with respect to the Property or portions thereof, either as originally executed or as it may from time to time be supplemented, modified or amended.

**“Note”** means the promissory note of even date herewith, in the original principal amount of Five Million Seven Hundred Thousand Dollars (\$5,700,000), executed by Borrower in favor of Lender to evidence the Loan, either as originally executed or as it may from time to time be supplemented, modified or amended.

**“NRS”** means the Nevada Revised Statutes, as amended from time to time.

**“Operation”** means the operation of Borrower’s business on the Property, including the operation, sales, leasing, running and maintenance of the Property and the Improvements.

**“Permitted Exceptions”** means the matters identified in Exhibit “C” attached hereto and made part hereof.

**“Person”** means any entity, whether an individual, trustee, corporation, partnership, trust, unincorporated organization or otherwise.

**“Personal Property”** means all present and future personal property (including the Project Documents) of Borrower of every kind and nature, whether tangible or intangible, now or hereafter located at, upon or about the Property, or used or to be used in connection with or relating or arising with respect to the Property and/or the Project, including but not limited to the property described in the Mortgage.

“USA” means USA Commercial Mortgage Company, a Nevada corporation, the mortgage company which arranged the Loan.

“Use” means ownership, use, development, construction, maintenance, management, operation or occupancy.

**1.2 Use of Defined Terms.** Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any number of the members of the relevant class. Any reference to the Loan Documents and other instruments, documents and agreements shall include such Loan Documents and other instruments, documents and agreements as originally executed or as the same may be supplemented, modified or amended.

**1.3 Accounting Terms.** All accounting terms not specifically defined in this Agreement shall be construed in conformity with, and all financial data required to be submitted by this Agreement shall be prepared in conformity with, generally accepted accounting principles applied on a consistent basis.

**1.4 Exhibits.** All exhibits to this Agreement, either as now existing or as the same may from time to time be supplemented, modified or amended, are incorporated herein by this reference.

## **SECTION 2: RECITALS.**

Borrower has applied to Lender for a Loan to acquire, develop, and make minor remedial repairs to the Property. Lender is willing to make the Loan to Borrower on the terms and conditions contained in this Agreement and the other Loan Documents.

## **SECTION 3: THE LOAN.**

**3.1 Amount of the Loan.** Subject to the terms and conditions set forth in this Agreement, Lender agrees to make a loan (“Loan”) to Borrower in a principal amount of Five Million Seven Hundred Thousand Dollars (\$5,700,000) (the “Loan Amount”), the disbursement of which by Lender is subject to the terms and conditions of the Loan Documents. The Loan Amount shall be disbursed in accordance with Lender’s instructions to the Title Company. From and after the Effective Date, the entire Loan Amount (whether paid to, or on behalf of, Borrower or held by the Disbursement Agent) shall bear interest at the rate set forth in the Note until fully repaid to Lender.

**3.2 Increase in Loan Amount.** From the Effective Date through and including September 30, 2003, Lender and USA shall have the exclusive right, but not the obligation, to increase the Loan Amount to an amount not to exceed Nine Million Seven Hundred Fifty Thousand Dollars (\$9,750,000). All amounts added to the Loan

Amount after the Effective Date shall be advanced by Lender for the following purposes: (i) to pay the loan fees due with regard to such advance, (ii) to fund development and repair costs and expenses, and (iii) to fund the Interest Reserve (defined below). Upon each increase in the Loan Amount, Borrower shall execute amendments to the Note and the Mortgage which shall memorialize the increase in the Loan Amount, the change in the identity of persons and entities which comprise Lender and their respective undivided interests in the Loan. Upon the recordation of the amendment(s) to the Mortgage, the Title Company shall issue to Lender, at Borrower's expense, an endorsement or endorsements to the Title Policy which shall (i) insure the continued priority of the Mortgage, and that the additional advance is secured thereby, (ii) reflect the increase in the face amount of the policy corresponding to the increase in the Loan Amount, and (iii) set forth the change in the identity of the insured lenders and their respective undivided interests in the Loan. Upon any such additional advance, a portion thereof shall be deposited into the Interest Reserve (defined below) for the Loan. Nothing herein shall be deemed to be a commitment by Lender or USA to fund to Borrower any more than the initial Loan Amount.

**3.3 Interest Reserve.** A portion of the Loan Amount, to be reasonably determined by Lender, shall be disbursed by the Title Company to the Disbursement Agent to be held as interest reserve for the benefit of Lender (the "Interest Reserve"). Disbursement Agent shall hold and disburse the Interest Reserve in accordance with the Control Account Escrow Agreement. As additional advances are made as provided in Section 3.2 above, a portion of such advances, the amount of which to be reasonably determined by Lender, shall be deposited into the Interest Reserve. Interest accrued on the Note Amount shall be paid from a portion of the Interest Reserve upon presentation of a monthly interest statement by Lender, without the necessity of any instruction or request from Borrower. Except as provided in this paragraph, the funds in the Interest Reserve shall never be used for any other purpose without the express written consent of Lender. Depletion of the Interest Reserve shall not release Borrower from any of Borrower's obligations under the Loan Documents, including but not limited to the obligation to pay interest accruing under the Note. After depletion of the Interest Reserve, or so long as any Event of Default has occurred and is continuing, all interest payments under the Note shall be made by Borrower using its own funds; provided that Lender, at its option and in its sole discretion, may obtain disbursements from the Interest Reserve notwithstanding such Event of Default. Upon the occurrence of an Event of Default, the entire balance of the Interest Reserve shall be paid to Lender upon demand and applied to the then outstanding balance of the Loan.

**3.4 Prepayment.** Borrower agrees that all loan fees and any prepaid finance charges are fully earned as of the date they are paid and will not be subject to refund upon any early payment hereof (whether voluntarily or as a result of default). Subject to the foregoing, Borrower may prepay the Loan, in full or in part, at any time provided, however, that if Borrower repays the Loan prior to the Maturity Date

(whether voluntarily or as a result of default), then Borrower shall pay to Lender a prepayment fee equal to all interest which would accrue on the full Loan Amount during a twelve (12) month period, less all interest previously paid. Notwithstanding anything to the contrary hereunder, Lender shall receive a minimum of twelve (12) months' interest on the full Loan Amount.

**3.5 Security.** The indebtedness evidenced by the Note, and all other indebtedness and obligations of Borrower under the Loan Documents, shall be secured by the Security Documents. The Environmental Indemnity and the Guaranty and the respective obligations of any of Borrowers and the Guarantor under each shall be unsecured.

#### **SECTION 4: CONDITIONS TO DISBURSEMENTS.**

**4.1 Initial Advance Conditions.** The obligation of Lender to initially close the Loan is subject to the following conditions precedent:

- (a) Borrower shall, at its sole expense, deliver or cause to be delivered to Lender, in form and substance satisfactory to Lender:
- (i) the original Note;
  - (ii) the original Mortgage;
  - (iii) the original Financing Statement;
  - (iv) the original Guaranty;
  - (v) the original Environmental Indemnity;
  - (vi) the original Control Account Escrow Agreement, executed by Borrower, Lender and Disbursement Agent;
  - (vii) the original Assignment of Permits, Licenses, Franchises and Authorizations executed by Borrower;
  - (viii) the original Assignment of Engineer's Contract, Improvement Plans, Specifications and Drawings;
  - (ix) a certificate of consent of Borrower, authorizing the execution, delivery and performance of the Loan Documents to be executed by a specified authorized officer on behalf of Borrower;

- (x) the certificates of consent of the Guarantor, authorizing the execution, delivery and performance of the Guaranty to be executed by a specified authorized officer on behalf of each Guarantor;
- (xi) an ALTA form of extended coverage of lender's policy of title insurance (or its equivalent), or evidence of a commitment therefor, issued by an insurer satisfactory to Lender, together with such endorsements and binders thereto as may be required by Lender pursuant to Section 6.6 hereof, in a policy amount of not less than the face amount of the Note, insuring the Mortgage to be a valid lien upon the Property, and showing the Property to be subject only to the Permitted Exceptions (said survey to be certified for the benefit of Lender);
- (xii) an appraisal of the Real Property certified to Lender, performed by an appraiser acceptable to Lender;
- (xiii) certified copies of, or certificate evidencing, all insurance policies required to be delivered pursuant to this Agreement;
- (xiv) copies of all permits and approvals by Governmental Agencies necessary to construct the Improvements (if available);
- (xv) current Financial Statements of Borrower and the Guarantor;
- (xvi) evidence, in form and substance acceptable to Lender, of the availability and sufficiency of all utilities to the Project;
- (xvii) copies of any proposed, or approved final Covenants, Conditions and Restrictions recorded or to be recorded on the Project;
- (xviii) a Phase I Hazardous Waste Survey and a and Phase II Hazardous Waste Remediation Plan, prepared by an entity or entities approved by Lender, in form and substance acceptable to, and approved by, Lender;
- (xix) such additional agreements, certificates, reports, approvals, instruments, documents, financing statements, consents and opinions as Lender may reasonably request; including, without limitation, a soils report for the Real Property (including, without limitation, all determinations required by Lender with respect to hazardous waste [as such term is defined in the Environmental

Indemnities] and water located on the Real Property).

- (b) Lender shall have reviewed and approved the Permitted Exceptions;
- (c) Borrower has acquired fee title to all of the Property;
- (d) The Mortgage shall have been recorded in the Official Records of the County in which the Property is located as a first priority lien;
- (e) The Financing Statement shall have been filed for record with the Connecticut Secretary of State.
- (f) Borrower's counsel shall have delivered its opinion, in a form acceptable to Lender, as to the existence and availability to the Property or Borrower of (i) UDAG and DECD grants, (ii) historical and market tax credits, (iii) an agreement with the state of Connecticut as to remediation of environmental problems on the Property, (iv) that the Loan Documents are valid, binding, and enforceable under Connecticut law, (v) that the interest rate and default interest rate are not usurious under Connecticut law, and (vi) that the choice of law provisions are enforceable under Connecticut law.

**4.2 Future Advance Conditions.** The obligation of Lender to make any additional advances pursuant to Section 3.2 above is subject to following conditions:

- (a) The representations and warranties of Borrower contained in all of the Loan Documents shall be correct on and as of the date of the advance as though made on and as of that date and no Event of Default (or event which, with the giving of notice and/or the passage of time, would become an Event of Default) shall have occurred and be continuing;
- (b) Borrower shall, at its sole expense, deliver or cause to be delivered to Lender, in form and substance satisfactory to Lender:
  - (i) from the title insurer who has issued the Title Policy, such endorsements, binders or modifications thereto as Lender may require; and
  - (ii) such additional agreements, certificates, reports, approvals, instruments, documents, consents or opinions as Lender may reasonably request.

**SECTION 5: REPRESENTATIONS AND WARRANTIES BY BORROWER.**

**5.1 Formation, Qualification and Powers of Borrower.** Borrower is a limited liability company duly formed and validly existing under the laws of the State of Connecticut, and has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver and perform all of its obligations under the Loan Documents.

**5.2 Authority and Compliance with Instruments and Government Regulations.** The execution, delivery and performance by Borrower of all of its obligations under each Loan Document have been duly authorized by all necessary action and do not and will not:

(a) require any consent or approval not heretofore obtained of any Person holding any security or interest or entitled to receive any security or interest in Borrower;

(b) violate any provision of any organizational document or certificate of Borrower;

(c) result in or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, claim, charge, right of others or other encumbrance of any nature, other than under the Loan Documents, upon or with respect to any property now owned or leased or hereafter acquired by Borrower;

(d) violate any provision of any Law, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Borrower or the Property, which violation would have a material, adverse impact thereon;

(e) result in a breach of or constitute a default under, cause or permit the acceleration of any obligation owed under, or require any consent under, any indenture or loan or credit agreement or any other agreement, lease or instrument to which Borrower is a party or by which Borrower or any property of Borrower, is bound or affected; and Borrower is not in default in any respect that is materially adverse to the interest of Lender or that would have any material adverse effect on the financial condition of Borrower or the conduct of its business under any Law, order, writ, judgment, injunction, decree, determination, award, indenture, agreement, lease or instrument described in Sections 5.2(d) and 5.2(e).

**5.3 Execution of the Guaranty by the Guarantor.** The execution and delivery of the Guaranty:

(a) have been duly authorized by all necessary action;

Borrower nor the Guarantor have any material liabilities or contingent liabilities not reflected or disclosed in such financial statements; and there are no material mortgages, deeds of trust, pledges, liens, security interests, claims, charges, right of others or encumbrances (including liens or retained security titles of conditional vendors) of any nature whatsoever on any property of Borrower or the Guarantor, and no material indebtedness, not disclosed in such financial statements.

**5.8 Tax Liability.** Borrower and the Guarantor have filed all tax returns (federal, state and local) required to be filed and have paid all taxes shown thereon to be due and all property taxes due, including interest and penalties, if any. Borrower and the Guarantor have established and are maintaining necessary reserves for tax liabilities, if any.

**5.9 Compliance with Law.** Borrower and Guarantor are in compliance in all material respects with all Laws and other requirements applicable to their business and have obtained all authorizations, consents, approvals, orders, licenses and exemptions from, and have accomplished all filings, registrations or qualifications with, any Governmental Agency that is necessary for the transaction of their business.

**5.10 Compliance with Requirements.** Throughout the term of the Loan, Borrower shall comply with all applicable covenants, conditions and restrictions, Laws and other requirements, and all necessary approvals, consents, licenses and permits of any Governmental Agency have been regularly and finally received with respect thereto, including without limitation each of the following as applicable:

- (a) all zoning, land use and planning requirements;
- (b) subdivision and/or parcel map requirements, including without limitation Requirements of applicable Law regarding subdivisions, parcel maps and the division of land into lots or parcels;
- (c) environmental requirements and preparation and approval of any necessary environmental impact statements or reports;
- (d) all requirements regarding the provision of all necessary utilities to the Real Property including the irrevocable allocation to the Property of sufficient domestic and fire protection water service to the Property;
- (e) all requirements imposed by any public utility in connection with the supply of utilities to the Property; and
- (f) all requirements imposed in connection with any approval, consent, license or permit issued or required by any Governmental Agency in connection with

denominated whereby the right is reserved or accrues to anyone to remove or repossess any such items or whereby any Person other than Lender reserves or acquires a lien upon such items; or

(b) remove or permit the removal of any fixtures or personality located on the Property or used in connection with the Project, except for tools and construction equipment intended for use in connection with the construction of other improvements, unless actually replaced by an article of equal suitability and value, owned by Borrower free and clear of any lien or security interest other than the Security Documents.

**6.4 Payment of Taxes, Assessments and Charges.** Borrower shall pay, prior to delinquency, all taxes, assessments, charges and levies imposed by any Governmental Agency which are or may become a lien affecting the Property or any part thereof, including without limitation assessments on any appurtenant water stock; except that Borrower shall not be required to pay and discharge any tax, assessment, charge or levy that is being actively contested in good faith by appropriate proceedings, as long as Borrower has established and maintains reserves adequate to pay any liabilities contested pursuant to this Section in accordance with generally accepted accounting principles and, by reason of nonpayment, none of the property covered by the Security Documents or the lien or security interest of Lender is in danger of being lost or forfeited.

**6.5 Insurance.** The Borrower shall at all times maintain the following policies of insurance:

(a) prior to completion of the Improvements, builder's "all risk" insurance ("completed value" form), including "course of construction" coverage, covering the Improvements and any Personal Property;

(b) from and after completion of the Improvements, property "all risk" insurance covering the Improvements and any Personal Property;

(c) commercial general liability insurance in favor of the Borrower (and naming the Lender as an additional insured) in an aggregate amount not less than \$2,000,000 (or such greater amount as may be specified by the Lender from time to time) combined single limit; and

(d) such other insurance as may be required by applicable Laws (including worker's compensation and employer's liability insurance) or as the Lender may reasonably require from time to time (including "all risk" insurance with respect to any other improvements now or in the future located on the Real Property and comprehensive form boiler and machinery insurance, if applicable, rental loss insurance and business interruption insurance).

The Borrower shall also cause any contractor and each subcontractor employed on the Property to maintain a policy of commercial general liability insurance and, upon request by the Lender, shall cause the Architect and any engineer engaged in connection with the Project to maintain a policy of professional liability insurance, in each case for such periods and in such amounts as the Lender may reasonably require from time to time.

Each policy of builder's-risk and all-risk insurance required by this Section 6.5 shall be in an amount not less than the full replacement cost of the property covered by such policy, shall contain a "waiver of coinsurance" provision, a "full replacement cost" endorsement, a "Mortgagee Loss Payable" clause, and a "Betterments" or "Building Ordinance" endorsement, and shall insure the Property against flood loss risk to the maximum available policy amount if the Real Property is located in a "Flood Hazard Area" (as determined by the Federal Emergency Management Agency). Each policy of commercial general liability insurance required by this Section shall cover personal injury, property liability, and contractual liability, including coverage for Borrower's indemnity obligations under the Loan Documents, and shall name Lender as an "additional insured". The commercial general liability insurance shall also cover completed operations, and such insurance shall be primary and non-contributing with any other insurance available to the Lender. All insurance policies shall be in form and substance and issued by insurers reasonably satisfactory to the Lender, and shall contain such deductible and such endorsements as the Lender may reasonably require. Each policy shall require thirty (30) day written notice to Lender prior to any cancellation thereof. As a condition to funding the Loan, Borrower shall provide to Lender an ACORD 27 form certificate evidencing such policies. Upon request by the Lender from time to time, the Borrower shall deliver to the Lender originals or copies of all such insurance policies.

**6.6 Title Insurance Endorsements.** Borrower shall deliver or cause to be delivered to Lender, in form and substance satisfactory to Lender, endorsements to the Title Policy and such other endorsement and binders as Lender may from time to time reasonably require.

**6.7 Books and Records.** Borrower shall: (a) maintain at the Project full and complete books of account and other records reflecting the results of its operations (in conjunction with any other business as well as specifically with respect to the Project) in accordance with generally accepted accounting principles applied on a consistent basis; and (b) permit Lender and its agents, at any time and from time to time, upon twenty-four (24) hours telephonic notice to Borrower, to inspect and copy all of such books and records, including without limitation any books and records pertaining to the Project or the Project Documents.

(c) as soon as available, and in any event within forty-five (45) calendar days after the close of each fiscal quarter of Borrower and each of the Guarantor, quarterly financial statements applicable to Borrower and each of the Guarantor, all in reasonable detail and prepared in accordance with generally accepted accounting principles applied on a consistent basis;

(d) as soon as available, and in any event within ninety (90) calendar days after the close of each fiscal year of Borrower, annual financial statements applicable to Borrower, all in reasonable detail and prepared in accordance with generally accepted accounting principles applied on a consistent basis;

(e) as soon as available, and in any event within ninety (90) calendar days after the close of each fiscal year of the Guarantor, annual financial statements applicable to the Guarantor, all in reasonable detail and prepared in accordance with generally accepted accounting principles applied on a consistent basis;

(f) promptly upon receipt thereof, any audited financial information applicable to Borrower or the Guarantor; and

(g) such other information relating to Borrower, Guarantor, the Property and/or the Project as Lender may reasonably request from time to time, including without limitation (i) tax returns, to be provided concurrently with the filing thereof with the relevant government authority or (ii) if Borrower or Guarantor receive an extension from the relevant governmental authority for filing a tax return, satisfactory evidence of such extension.

**6.11 Surveys. Borrower agrees to furnish Lender all of the following:**

(a) a perimeter survey of the Property (a copy of the Subdivision Map of the Property shall satisfy this requirement); and

(b) upon request by Lender, immediately upon completion of the foundations of any of the Improvements, a survey made and certified by a licensed engineer or surveyor showing the locations of the Improvements located on the Property and showing that the Improvements are located entirely within the Property lines and do not encroach upon any easement, or breach or violate any Law or any covenant, condition or restriction of record, or any building or zoning ordinance.

**6.12 Management of Property and Project. Borrower shall not enter into any agreement providing for the management, leasing or operation of the Property or the Project without the prior written consent of the Lender.**

**6.13 Defense of Vested Right, Modification of Vested Rights. Borrower shall**

of any matter in connection with the Project, including without limitation matters relating to the quality, adequacy or suitability of: (i) any plans or specifications, (ii) architects, contractors, subcontractors and materialmen employed or utilized in connection with the construction of the Improvements, or the workmanship of or the materials used by any of them, or (iii) the progress or course of any construction and its conformity or nonconformity with the plans therefor; and Borrower shall rely entirely upon its own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Borrower by Lender in connection with such matters is for the protection of Lender only and neither Borrower nor any third party is entitled to rely thereon;

(d) Lender owes no duty of care to protect Borrower against negligent, faulty, inadequate or defective building or construction;

(e) the relationship of Borrower and Lender under the Loan Documents is, and shall at all times remain, solely that of borrower and lender, and Lender neither undertakes nor assumes any responsibility or duty to Borrower or to any other Person with respect to the Property or Loan, except as expressly provided in the Loan Documents; and notwithstanding any other provision of the Loan Documents: (i) Lender is not, and shall not be construed as, a partner, joint venturer, alter-ego, manager, controlling person or an insider or other business associate or participant of any kind of Borrower, and Lender does not intend to ever assume such status; (ii) Lender's activities in connection with the Loan Documents shall not be "outside the scope of the activities of a lender of money" under Nevada law, as amended or recodified from time to time, and Lender does not intend to ever assume any responsibility to any Person for the quality, suitability, safety or condition of the Property or Improvements; and (iii) Lender shall not be deemed responsible for or a participant in any acts, omissions or decisions of Borrower; and

(f) Lender shall not be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any Person or property arising from any construction on, or occupancy or use of, any of the Property, whether caused by, or arising from: (i) any defect in any building, structure, soil condition, grading, fill, landscaping, or other improvements thereon or in any on-site or off-site improvement or other facility therein or thereon; (ii) any act or omission of Borrower or any of Borrower's agents, employees, independent contractors, licensees or invitees; (iii) any accident in or on any of the Property or any fire, flood or other casualty or hazard thereon; (iv) the failure of Borrower, any of Borrower's licensees, employees, invitees, agents, independent contractors or other representatives to maintain any of the Property in a safe condition; and (v) any nuisance made or suffered on any part of the Property.

**8.5    No Third Parties Benefitted.** This agreement is made for the purpose of defining and setting forth certain obligations, rights and duties of Borrower, Lender and USA in connection with the Loan. It shall be deemed a supplement to the Note and the Security Documents, and shall not be construed as a modification of the Note or the Security Documents, except as provided herein. It is made for the sole protection of Borrower, Lender, and USA and their successors and assigns. No other Person shall have any rights of any nature hereunder of by reason hereof.

**8.6    Indemnity.** Borrower indemnifies Lender against, and holds Lender harmless from, any and all losses, damages (whether general, punitive or otherwise), liabilities, claims, cause of action (whether legal, equitable or administrative), judgments, court costs and legal or other expenses, including attorneys' fees, which Lender may suffer or incur as a direct or indirect consequence of: (a) Lender's performance of this Agreement or any of the Loan Documents, including, without limitation, Lender's exercise or failure to exercise any rights, remedies or powers in connection with this Agreement or any of the Loan Documents but excluding charges and assessments by Governmental Agencies imposed upon the Lender in the normal course of the Lender's business such as taxes and regulatory fees; (b) Borrower's failure to perform any of Borrower's obligations as and when required by this Agreement or any of the other Loan Documents, including without limitation any failure, at any time, of any representation or warranty of Borrower to be true and correct and any failure by Borrower to satisfy any condition; (c) any claim or cause of action of any kind by any Person to the effect that Lender is in any way responsible or liable for any act or omission by Borrower, whether on account of any theory or derivative liability or otherwise, including but not limited to any claim or cause of action for fraud, misrepresentation, tort or willful misconduct; (d) any act or omission by Borrower, any contractor, subcontractor or material supplier, engineer, architect, or any other Person with respect to any of the Property or Improvements; or (e) any claim or cause of action of any kind by any Person which would have the effect of denying Lender the full benefit or protection of any provision of this Agreement or the Loan Documents but excluding charges and assessments by Governmental Agencies imposed upon Lender in the normal course of Lender's business such as taxes and regulatory fees. Lender's rights of indemnity shall not be directly or indirectly limited, prejudiced, impaired or eliminated in any way by any finding or allegation that Lender's conduct is active, passive or subject to any other classification or that Lender is directly or indirectly responsible under any theory of any kind, character or nature for any act or omission by Borrower or any other Person. Notwithstanding the foregoing, Borrower shall not be obligated to indemnify Lender with respect to any intentional tort or act of negligence which Lender is personally determined by the judgment or a court of competent jurisdiction (sustained on appeal, if any) to have committed. Borrower shall pay any indebtedness arising under this indemnity to Lender immediately within seventy-two (72) hours after demand therefor by Lender together with interest thereon from the date such indebtedness arises until paid at the

**Default Rate.** Borrower's duty to defend and indemnify Lender shall survive the release and cancellation of the Note and the release and reconveyance or partial release and reconveyance of the Mortgage.

**8.7 Commissions.** Borrower hereby indemnifies Lender from the claim of any Person for a commission or fee in connection with the Loan.

**8.8 Lenders' Representative.** The persons and entities which comprise Lender hereby collectively appoint USA Commercial Mortgage Company ("USA") to administer the Loan on their behalf, to make all necessary demands on Borrower and to execute and deliver all approvals and notices to be given by Lender hereunder.

**8.9 Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns, except that, as provided herein, Borrower may not assign its rights or interest or delegate any of its duties under this Agreement or any of the other Loan Documents without prior written consent of Lender.

**8.10 Amendments; Consents.** No amendment, modification, supplement, termination or waiver of any provision of this Agreement or any of the other Loan Documents, and no consent to any departure by Borrower therefrom, may in any event be effective unless in writing signed by Lender, and then only in the specific instance and for the specific purpose given.

**8.11 Costs, Expenses and Taxes.** Borrower shall pay to Lender, within seventy-two (72) hours after demand therefor:

(a) the actual attorneys' fees and out-of-pocket expenses incurred by Lender in connection with the negotiation, preparation, execution, delivery and administration of this Agreement and any other Loan Documents and any matter related thereto;

(b) the actual costs and expenses of Lender in connection with any modification of any Loan Document or in connection with the enforcement of this Agreement and any other Loan Document and any matter related thereto, including the actual fees and out-of-pocket expenses, reasonably incurred, of any legal counsel, independent public accountants and other outside experts retained by Lender; and

(c) all costs, expenses, fees, premiums and other charges relating or arising with respect to the Loan Documents or any transactions contemplated thereby or the compliance with or enforcement of any of the terms and conditions thereof, including without limitation the Disbursement Agent's fee, appraisal fees, inspection fees, cost review fees, recording fees, filing fees, release or reconveyance fees, title insurance premiums, and the cost of realty tax service for the term of the Loan.

All sums paid or expended by Lender under the terms of this Agreement and the other Loan Documents shall be considered to be a part of the Loan. Except as otherwise specifically stated herein, all such sums shall be secured by the Security Documents, shall bear interest from the date of expenditure as if such sums were advances under the Note, and shall be immediately due and payable by Borrower within seventy-two (72) hours after demand therefor.

**8.12 Survival of Representations and Warranties.** All representations and warranties of Borrower and Guarantor contained herein or in any other Loan Document shall survive the making of the Loan and execution and delivery of the Note; and are material and have been or will be relied upon by Lender, notwithstanding any investigation made by Lender or on behalf of Lender. For the purpose of the foregoing, all statements contained in any certificate, agreement, financial statement, or other writing delivered by or on behalf of Borrower or Guarantor pursuant hereto or to any other Loan Document or in connection with the transactions contemplated hereby or thereby shall be deemed to be representations and warranties of Borrower or Guarantor contained herein or in the other Loan Documents, as the case may be.

**8.13 Notices.** All notices to be given pursuant to this Agreement shall be sufficient if given by personal services, by guaranteed overnight delivery service, by telex, telecopy or telegram or by being mailed postage prepaid, certified or registered mail, return receipt requested, to the described addresses of the parties hereto as set forth below, or to such other address as a party may request in writing. Any time period provided in the giving of any notice hereunder shall commence upon the date of personal service, the day after delivery to the guaranteed overnight delivery service, the date of sending the telex, telecopy or telegram or two (2) days after mailing certified or registered mail.

**BORROWER'S ADDRESS:**

Colt Gateway, LLC  
c/o Homes for America Holdings, Inc.  
One Odell Plaza  
Yonkers, New York 10701  
Attn. Robert A. MacFarlane

**WITH COPY TO:**

Daniel G. Hayes, Esq.  
Vanderpool, Frostick & Nishanaian, P.C.  
9200 Church Street, Suite 400  
Manassas, Virginia 20110-5561  
(703) 369-4738  
Fax (703) 369-3653

**LENDER'S ADDRESS:**

USA Commercial Mortgage Company

4484 South Pecos Road  
Las Vegas, Nevada 89121  
Attn: Joe Milanowski

**8.14 Further Assurances.** Borrower shall, at its sole expense and without expense to Lender, do such further acts and execute and deliver such further documents as Lender from time to time may require for the purpose of assuring and confirming unto Lender the rights hereby created or intended now or hereafter so to be, or for carrying out the intention or facilitating the performance of the terms of any Loan Document, or for assuring the validity of any security interest or lien under any Security Document.

**8.15 Governing Law; Jurisdiction; Waiver of Jury Trial.**

(a) Unless otherwise specifically provided, the laws of the State of Nevada, without regard to its choice of law provisions, shall govern enforcement of the Loan Documents.

(b) BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (i) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF NEVADA OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THE NOTE, THIS INSTRUMENT OR ANY OTHER OF THE LOAN DOCUMENTS, (ii) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN CLARK COUNTY, NEVADA, (iii) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND, (iv) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY FORUM OTHER THAN CLARK COUNTY, NEVADA (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). BORROWER FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO THE BORROWER AT THE ADDRESS FOR NOTICES DESCRIBED IN SECTION 8.13 HEREOF, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

(c) BORROWER, TO THE FULL EXTENT PERMITTED BY LAW,

held to be inoperative, unenforceable or invalid shall be inoperative, unenforceable or invalid without affecting the remaining provisions, and to this end the provisions of all Loan Documents are declared to be severable.

**8.17 Assignment or Sale of Participation by Lender; Advertising.** Lender may, at any time, sell, transfer, assign or grant participation in the Loan and in the Loan Documents and Lender may forward to its Partners or to such participant and prospective participant all documents and information relating to the Loan and to Borrower, whether furnished by Borrower or otherwise, as Lender determines necessary or desirable. Lender and USA may also reasonably divulge and advertise the making of the Loan and the amount thereof.

**8.18 Headings.** Section headings in this Agreement are included for convenience of reference only and are not part of this Agreement for any other purpose.

**8.19 Time of the Essence.** Time is of the essence with respect to all duties and obligations of Borrower under any Loan Document.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**BORROWER:** Colt Gateway LLC, By: Homes For American Holdings, Inc.

By:   
Robert A. MacFarlane, President

**LENDER:**

By: \_\_\_\_\_

By: \_\_\_\_\_

**EXHIBIT "A"**

**LENDER**

<b><u>NAME</u></b>	<b><u>AMOUNT</u></b>
Fertitta Enterprises, Inc.	\$3,000,000
USA Capital Diversified Trust Deed Fund, LLC	\$1,350,000
USA Commercial Mortgage Company	<u>\$1,350,000</u>
	\$5,700,000

**EXHIBIT "B"**

**DISBURSEMENT SCHEDULE**

**EXHIBIT "D"**  
**DESCRIPTION OF REAL PROPERTY**

**Property Descriptions**

*Parcel One*

All that certain parcel of land with buildings and/or improvements located thereon situated on the westerly side of Huyshope Avenue in the City of Hartford, County of Hartford and State of Connecticut, being more particularly bounded and described as follows:

Beginning at a point on the westerly line of Huyshope Avenue, which point is located at the intersection of the northerly line of Masseek Street and the westerly line of Huyshope Avenue and which point marks the southeasterly corner of the herein described parcel, the lines runs;

Thence S 49° - 37' - 36" W along the northerly line of Masseek Street, a distance of 230.42' to a point;

Thence N 40° - 24' - 57" W along the easterly line of Van Block Avenue, a distance of 498.91' to a point;

Thence N 49° - 31' - 06" E along the southerly line of Weehasset Street, a distance of 230.22' to a point;

Thence S 40° - 26' - 20" E along the westerly line of Huyshope Avenue, a distance of 499.35' to the point or place of beginning; said parcel contains 2.64 acres of land by computation.

*Parcel Two*

All that certain parcel of land with buildings and improvements located thereon situated on the westerly side of Van Dyke Avenue in the City of Hartford, County of Hartford and State of Connecticut, being more particularly bounded and described as follows:

Beginning at a point on the westerly line of Van Dyke Avenue, which point is located at the intersection of the southerly line of Sequassen Street and the westerly line of Van Dyke Avenue and which point marks the northeasterly corner of the herein described parcel, the lines runs;

Thence S 40° - 25' - 32" E along the westerly line of Van Dyke Avenue, a distance of 826.87' to a point;

Thence by a curve to the right have a delta angle of 05° -20' - 28" and a radius of 889.73' along a taking line of the State of Connecticut, an arc distance of 82.94' to a point;

Thence S 35° - 05' - 00" E along a taking line of the State of Connecticut, a distance of 24.21' to a point;

Thence S 49° - 33' - 28" W along land now or formerly of the State of Connecticut, a distance of 510.71' to a point;

Thence N 40° - 26' - 20" W along the easterly line of Huyshope Avenue, a distance of 934.00' to a point;

Thence N 49° - 33' - 28" E along the southerly line of Sequassen Street, a distance of 517.05' to the point or place of beginning; said parcel contains 11.08 acres of land by computation.

*Parcel Three*

All that certain parcel of land with buildings and improvements located thereon situated on the westerly side of Vredendale Avenue in the City of Hartford, County of Hartford and State of Connecticut, being more particularly bounded and described as follows:

Beginning at a point on the westerly line of Van Dyke Avenue, which point is located at the intersection of the northerly line of Sequassen Street and the westerly line of Van Dyke Avenue and which point marks the southeasterly corner of the herein described parcel, the lines runs;

Thence S 49° - 33' - 28" W along the northerly line of Sequassen Street, a distance of 248.00' to a point;

Thence N 40° - 26' - 32" W along the easterly line of Vredendale Avenue, a distance of 490.61' to a point;

Thence S 76° - 51' - 16" E along the southwesterly line of Van Dyke Avenue, a distance of 417.80' to a point;

Thence S 40° - 26' - 32" E along the westerly line of Van Dyke Avenue, a distance of 154.38' to the point or place of beginning; said parcel contains 1.84 acres of land by computation.

*Parcel Four*

All that certain parcel of land with buildings and improvements located thereon situated on the westerly side of Huyshope Avenue in the City of Hartford, County of Hartford and State of Connecticut, being more particularly bounded and described as follows:

Beginning at a point on the easterly line of Huyshope Avenue, which point is located at the intersection of the northerly line of Sequassen Street and the westerly line of Huyshope Avenue and which point marks the southwesterly corner of the herein described parcel, the lines runs;

Thence N 40° - 26' - 32" W along the easterly line of Huyshope Avenue, a distance of 274.18' to a point;

Thence N 49° - 33' - 28" E along land now or formerly of Otto R. Ruppert, Trustee, a distance of 229.00' to a point;

Thence S 40° - 26' - 32" E along the westerly line of Vredendale Avenue, a distance of 274.18' to a point;

Thence S 49° - 33' - 28" W along the northerly line of Sequassen Street, a distance of 229.00' to the point or place of beginning; said parcel contains 1.44 acres of land by computation.

# **EXHIBIT “G”**

**EXHIBIT “G”**

**PROMISSORY NOTE  
SECURED BY MORTGAGE**

**\$5,700,000**

Las Vegas, Nevada  
December 22, 2002

This Promissory Note ("Note"), dated as of December 22, 2002 is made and delivered by Colt Gateway LLC, a Connecticut limited liability company ("Borrower"), in favor of the persons listed on Exhibit "A" hereto ("Lender").

**FOR VALUE RECEIVED, Borrower promises to pay to Lender, or order, the principal sum of Five Million Seven Hundred Thousand Dollars (\$5,700,000) (the "Note Amount"), together with interest as provided herein.**

1. **Interest Rate.** Interest shall accrue on the outstanding portion of the Note Amount, from the date Lender initially disburses such funds until the date the Note Amount is paid in full, at the rate of fifteen percent (15%) per annum. Interest shall be calculated on the basis of a 360-day year and actual days elapsed. Accrued but unpaid interest shall be compounded monthly.

2. **Payments.** Monthly interest on the Note Amount shall be due and payable on the first day of each month, in arrears. For example, interest that accrues in the month of May will be due and payable on June 1, and will be calculated on the amount due under the Note on that day. All payments shall be made in lawful money of the United States of America and in immediately available funds at Lender's office, the address for which is specified below, or at such other place as the Lender hereof may from time to time direct by written notice to Borrower.

3. **Maturity Date.** If not sooner paid, the outstanding principal balance under this Note, all accrued and unpaid interest, and all other indebtedness of Borrower owing under any and all of the Loan Documents shall be due and payable in full on or before the date which is twelve months from the date of the Note (the "Maturity Date").

4. **Application of Payments.** All payments on this Note shall, at the option of the Lender hereof, be applied first to the payment of accrued interest then payable.

5. **Prepayment.** Borrower agrees that all loan fees and any prepaid finance charges are fully earned as of the date hereof and will not be subject to refund upon early payment (whether voluntary or as a result of default). If Borrower repays this Note prior to the Maturity Date, Borrower shall pay a repayment fee equal to the difference between the interest that would have been due on the full Loan Amount from closing until the Maturity Date less the interest actually paid by Borrower as of the early repayment date.

6. **Collateral.** This Note is secured by a mortgage encumbering real property

located in Hartford County, Connecticut, and by a UCC-1 covering personality and fixtures of Borrower.

7. **Defaults; Acceleration.** The occurrence of any Event of Default (as hereinafter defined) shall be a default hereunder. Upon the occurrence of an Event of Default, Lender may declare the entire principal balance of the Note then outstanding (if not then due and payable) and all other obligations of Borrower hereunder to be due and payable immediately. Subject to the applicable provisions of law, upon any such declaration, the principal of the Note and accrued and unpaid interest, and all other amounts to be paid under this Note shall become and be immediately due and payable, anything in this Note to the contrary notwithstanding.

The occurrence of any one or more of the following, whatever the reason therefor, shall constitute an "Event of Default" hereunder:

- (a) Borrower shall fail to pay when due any amount due pursuant to the Note; or
- (b) Borrower or any guarantor ("Guarantor") of the Note shall fail to perform or observe any term, covenant or agreement contained in the Note or any guaranty executed and delivered concurrently herewith on its part to be performed or observed, other than the failure to make a payment covered by subsection (a), and such failure shall continue uncured as of ten (10) calendar days after written notice of such failure is given by Lender to Borrower; provided, however, that if the default cannot be cured in 10 days but Borrower is diligently pursuing the cure, then Borrower shall have thirty (30) days after written notice to effect the cure (the cure period set forth in this subsection (b) shall not apply to any other Event of Default); or
- (c) any representation or warranty contained in any document made or delivered pursuant to or in connection with any of the Loan Documents proves incorrect or to have been incorrect in any material respect when made; or
- (d) Borrower (which term shall include any entity comprising Borrower) or any Guarantor is dissolved or liquidated, or otherwise ceases to exist, or all or substantially all of the assets of Borrower or any Guarantor are sold or otherwise transferred without Lender's written consent; or
- (e) Borrower or any Guarantor is the subject of an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or Borrower or any Guarantor applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer (the "Receiver"); or any Receiver is appointed without the application or consent of Borrower or any Guarantor, as the case may be, and the appointment

continues undischarged or unstayed for sixty (60) calendar days; or Borrower or any Guarantor institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceedings relating to it or to all or any part of its property under the laws of any jurisdiction; or any similar proceeding is instituted without the consent of Borrower or any Guarantor, as the case may be, and continues undismissed or unstayed for sixty (60) calendar days; or any judgment, writ, attachment, execution or similar process is issued or levied against all or any part of the Property or Borrower or any Guarantor, and is not released, vacated or fully bonded within thirty (30) calendar days after such issue or levy; or

(f) there shall occur a material adverse change in the financial condition of Borrower or any Guarantor from their respective financial conditions as of the date of this Note, as determined by Lender in its reasonable discretion; or

(g) any Loan Document, at any time after its execution and delivery and for any reason other than the agreement of Lender or the satisfaction in full of all indebtedness and obligations of Borrower under the Loan Documents, ceases to be in full force and effect or is declared to be null and void by a court of competent jurisdiction; or Borrower or any trustee, officer, director, shareholder or partner of any entity comprising Borrower or any Guarantor claims that any Loan Document is ineffective or unenforceable, in whole or in part, or denies any or further liability or obligation under any Loan Document, unless all indebtedness and obligations of Borrower thereunder have been fully paid and performed; or

(h) all or a substantial portion of the Property is condemned, seized or appropriated by any Governmental Agency; or

(i) Borrower is dissolved or liquidated, or otherwise ceases to exist, or all or substantially all of the assets of Borrower or the Guarantors are sold or otherwise transferred without Lender's written consent; or

(j) any lien or security interest created by any Security Document, at any time after the execution and delivery of that Security Document and for any reason other than the agreement of Lender or the satisfaction in full of all indebtedness and obligations of Borrower under the Loan Documents, ceases or fails to constitute a valid, perfected and subsisting lien of the priority required by this Agreement or security interest in and to the Property purported to be covered thereby, subject only to the Permitted Exceptions; or

(k) any default occurs in any loan document or other agreement by and between Borrower and Lender or by Borrower in favor of Lender with reference to the Loan or otherwise, or any default occurs in any loan document regarding any loan or other obligation secured by the Property or any portion thereof.

8. Late Charge. Borrower acknowledges that if any interest payment is not

made when due or if the entire amount due under this Note is not paid by the Maturity Date, or, if accelerated as permitted by this Note or any other Loan Document, by the date given in the notice of acceleration, the Lender hereof will incur extra administrative expenses (i.e., in addition to expenses incident to receipt of timely payment) and the loss of the use of funds in connection with the delinquency in payment. Because the actual damages suffered by the Lender hereof by reason of such extra administrative expenses and loss of use of funds would be impracticable or extremely difficult to ascertain, Borrower agrees that five percent (5%) of the amount so delinquent shall be the amount of damages to which such Lender is entitled, upon such breach, in compensation therefor. Therefore, Borrower shall, in the event any payment required under this Note is not paid within five (5) days after the date when such payment becomes due and payable pursuant to Sections 2 and 3, above, and without regard to any default notice under Section 7(a), and without further notice, pay to the Lender hereof as such Lender's sole monetary recovery to cover such extra administrative expenses and loss of use of funds, liquidated damages in the amount of five percent (5%) of the amount of such delinquent payment. The provisions of this paragraph are intended to govern only the determination of damages in the event of a breach in the performance of the obligation of Borrower to make timely payments hereunder, including timely payment of any accelerated amount. Nothing in this Note shall be construed as an express or implied agreement by the Lender hereof to forbear in the collection of any delinquent payment or in exercising any of its rights and remedies under the Loan Documents, or be construed as in any way giving Borrower the right, express or implied, to fail to make timely payments hereunder, whether upon payment of such damages or otherwise. The right of the Lender hereof to receive payment of such liquidated and actual damages, and receipt thereof, are without prejudice to the right of such Lender to collect such delinquent payments and any other amounts provided to be paid hereunder or under any security for this Note or to declare a default hereunder or under any security for this Note.

9. Default Rate. From and after the Maturity Date or, if any Event of Default occurs and is not timely cured, from the date the payment was due regardless of any cure period provided in the notice of default, through and including the date such default is cured, at the option of the Lender hereof, all amounts owing under the Note and all sums owing under all of the Loan Documents shall bear interest at a default rate equal to twenty percent (20%) per annum ("Default Rate"). Such interest shall be paid on the first day of each month thereafter, or on demand if sooner demanded.

10. Waivers. Borrower waives any right of offset it now has or may hereafter have against the Lender hereof and its successors and assigns. Borrower waives presentment, demand, protest, notice of protest, notice of nonpayment or dishonor and all other notices in connection with the delivery, acceptance, performance, default or enforcement of this Note. Borrower expressly agrees that any extension or delay in the time for payment or enforcement of this Note, to renewal of this Note and to any substitution or release of the Property, all without any way affecting the liability of Borrower hereunder. Any delay on Lender's part in exercising any right hereunder or under any of the Loan Documents shall not operate as a

waiver. Lender's acceptance of partial or delinquent payments or the failure of Lender to exercise any rights shall not waive any obligation of Borrower or any right of Lender, or modify this Note, or waive any other similar default.

11. Costs of Collection. Borrower agrees to pay all costs of collection when incurred and all costs incurred by the Lender hereof in exercising or preserving any rights or remedies in connection with the enforcement and administration of this Note or following a default by Borrower, including but not limited to actual attorneys' fees. If any suit or action is instituted to enforce this Note, Borrower promises to pay, in addition to the costs and disbursements otherwise allowed by law, such sum as the court may adjudge reasonable attorneys' fees in such suit or action.

12. Usury. Borrower hereby represents that this loan is for commercial use and not for personal, family or household purposes. It is the specific intent of the Borrower and Lender that this Note bear a lawful rate of interest, and if any court of competent jurisdiction should determine that the rate herein provided for exceeds that which is statutorily permitted for the type of transaction evidenced hereby, the interest rate shall be reduced to the highest rate permitted by applicable law, with any excess interest theretofore collected being applied against principal or, if such principal has been fully repaid, returned to Borrower upon written demand.

13. Notices. All notices to be given pursuant to this Note shall be sufficient if given by personal services, by guaranteed overnight delivery services, by telex, telecopy or telegram or by being mailed postage prepaid, certified or registered mail, return receipt requested, to the described addresses of the parties hereto as set forth below, or to such other address as a party may request in writing. Any time period provided in the giving of any notice hereunder shall commence upon the date of personal service, the date after delivery to the guaranteed overnight delivery service, the date of sending the telex, telecopy or telegram or two (2) days after mailing certified or registered mail.

**BORROWER'S ADDRESS:**

Colt Gateway LLC  
c/o Homes for America Holdings, Inc.  
One Odell Plaza  
Yonkers, Nevada 10701  
Attn. Robert A. MacFarlane

**WITH COPY TO:**

Daniel G. Hayes, Esq.  
Vanderpool, Frostick & Nishanaian, P.C.  
9200 Church Street, Suite 400  
Manassas, Virginia 20110-5561  
(703) 369-4738  
Fax (703) 369-3653

**LENDER'S ADDRESS:**

c/o USA Commercial Mortgage Company  
4484 South Pecos Road  
Las Vegas, Nevada 89121  
Attn, Joseph D. Milanowski

14. **Assignment By Lender.** Lender may assign all or any portion of its rights hereunder or obtain participants in this Note at any time, and any such assignee, successor or participant shall have all rights of the Lender hereunder.

15. **Multiple Parties.** A default on the part of any one entity comprising Borrower or any Guarantor of this Note shall be deemed a default on the part of Borrower hereunder.

16. **Construction.** This Note and all security documents and guaranties executed in connection with this Note have been reviewed and negotiated by Borrower, Lender and Guarantors at arms' length with the benefit of or opportunity to seek the assistance of legal counsel and shall not be construed against either party. The titles and captions in this Note are inserted for convenience only and in no way define, limit, extend, or modify the scope of intent of this Note.

17. **Partial Invalidity.** If any section or provision of this Note is declared invalid or unenforceable by any court of competent jurisdiction, said determination shall not affect the validity or enforceability of the remaining terms hereof. No such determination in one jurisdiction shall affect any provision of this Note to the extent it is otherwise enforceable under the laws of any other applicable jurisdiction.

18. **Governing Law; Jurisdiction; Waiver of Jury Trial.**

(a) This Note shall be construed according to and governed by the laws of the State of Nevada, without regard to its choice of law provisions.

(b) BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (i) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF NEVADA OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS NOTE, OR ANY OTHER OF THE LOAN DOCUMENTS, (ii) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN CLARK COUNTY, NEVADA, (iii) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND, (iv) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY FORUM OTHER THAN CLARK COUNTY, NEVADA (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). BORROWER FURTHER CONSENTS AND

AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO THE BORROWER AT THE ADDRESS FOR NOTICES DESCRIBED IN SECTION 13 HEREOF, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

(c) BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE INDEBTEDNESS SECURED HEREBY OR ANY CONDUCT, ACT OR OMISSION OF LENDER, TRUSTEE OR BORROWER, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER, TRUSTEE OR BORROWER, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

(Signature page follows)

BORROWER: Colt Gateway LLC

By: Homes For America Holdings, Inc.

By:

Robert A. MacFarlane

Its: President

**EXHIBIT "A"**

**LENDER**

<u>NAME</u>	<u>AMOUNT</u>
Fertitta Enterprises, Inc.	\$3,000,000
USA Capital Diversified Trust Deed Fund, LLC	\$1,350,000
USA Commercial Mortgage Company	<u>\$1,350,000</u>
	\$5,700,000